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Security Council

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/391).

The Counter-Terrorism Committee has received the attached supplementary report from Switzerland, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-51357 (E) 210802

Annex

[Original: French]

Letter dated 11 July 2002 from the Permanent Observer of Switzerland to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I have the honour to transmit to you, enclosed herewith, the replies of Switzerland to the comments and questions of the Counter-Terrorism Committee concerning the Swiss report of 19 December 2001 (see attachment).

(*Signed*) Jenö C. A. **Staehelin**
Ambassador

Attachment

[Original: French]

Report on counter-terrorism submitted by Switzerland to the Security Council Committee established pursuant to resolution 1373 (2001)

Replies to the preliminary comments and questions from the Committee concerning the Swiss report of 19 December 2001

Paragraph 1 of the resolution

Subparagraph (b): Identifying economic ownership

1. *Could Switzerland please outline the procedures binding on financial intermediaries for determining or verifying "economic ownership"? What criteria are used to verify "economic ownership"? Have financial intermediaries already been convicted in Switzerland for "inadequate vigilance" in verifying economic ownership?*

These procedures are defined in the Anti-Money-Laundering Act (AMLA)

Under **article 3 of AMLA**, when a business relationship is established, the financial intermediary must verify the identity of the contracting partner — who is in principle the beneficial owner — on the basis of documentary evidence. In that connection, article 305 ter of the Swiss Penal Code provides criminal sanctions for lack of vigilance in respect of financial operations.

Moreover, under the following three assumptions, as mentioned in **article 4 of AMLA**, namely where: (1) the contracting partner is not the beneficial owner or where there is a doubt on the matter; (2) the contracting partner is a domiciliary company; or (3) a cash transaction involving a large sum as defined in article 3 (a) (2) of AMLA is carried out — financial intermediaries must require the contracting partner to make an additional written statement indicating that he is the beneficial owner. As regards global accounts or global deposits, financial intermediaries must insist that the contracting partner provide them with a complete list of beneficial owners and notify them immediately of any amendment to the list.

Article 5 of AMLA refers to the renewed verification of the identity of the contracting partner or identification of the economic beneficial owner. It provides that where, in the course of a business relationship, doubts arise as to the identity of the contracting partner or the beneficial owner, the verification of identity or the identification provided for in article 3 (identification of the contracting partner) and article 4 must be renewed. We would point out that in the case of redemption insurance, the insurance institution must renew the identification of the beneficial owner where, in the event of a disaster or a redemption, the owner is not the person mentioned when the contract was concluded.

In the banking field, these principles were spelled out in the Agreement on the Swiss Banks' Code of Conduct with regard to the exercise of due diligence (CDB 98) of the Swiss Bankers Association which provides, in particular, rules for establishing the identity of the beneficial owner (art. 3 CDB 98), rules for

domiciliary companies (art. 4 CDB 98) and procedures applicable in the event of changes and errors with respect to the verification of the contracting partner's identity or the declaration of identity of the beneficial owner (art. 6 CDB 98) (available in English at http://www.swissbanking.org/en/110_e.pdf).

In compliance with marginal figure 10 of the Circular of the Federal Banking Commission (CFB 98/1, Money-laundering), the rules for identification of the beneficial owner established by CDB 98 are the minimum standard applicable both for banks and for securities dealers and investment fund managers.

The Swiss judicial authorities have rendered 14 judgements under article 305 ter of the Penal Code (PC) (inadequate vigilance in financial operations) since 1998 (the date on which it became mandatory for cantonal authorities to notify the Money Laundering Reporting Office of procedures pending, judgements and charges dismissed). These 14 judgements comprise 3 convictions, 1 acquittal and 10 cases dismissed.

The Agreement on the Swiss Banks' Code of Conduct with regard to the exercise of due diligence (CDB 98) also provides machinery for penalties in the event of failure to comply with the requirements of CDB 98 (art. 11 ss CDB 98).

2. *Have there already been convictions of financial intermediaries in Switzerland for "failure to report suspicions"? What are the penalties that may be incurred and what penalties, if any, have already been imposed?*

There have so far been no convictions for failure to report suspicions (art. 37 AMLA). However, a number of cases are currently pending. A fine of up to 200,000 Swiss francs may be imposed.

Subparagraph (c): Freezing of assets, procedures

Please outline the procedure for freezing assets. By whom can it be initiated? Who decides on the freezing of assets? May such a freeze be appealed? If so, please enumerate and describe the various appeal or review procedures.

A. National procedure

1. Penal procedure

Freezing of assets: The possibility of seizure with a view to confiscation is governed by the Federal Act on Penal Procedure (PPF) and by the codes of penal procedure of the various cantons. Where a penal procedure has been instituted, sequestration measures may be ordered with a view to subsequent confiscation. Any property that stems from an offence may be confiscated (art. 59, ch.1 PC). It is also possible to order a sequestration measure against a third party or against organizations for the purpose of confiscation (art. 59, ch.1 and 2 PC). There is, in particular, considerable scope for the sequestration and confiscation of property stemming from organized crime. A court may order the confiscation of any property over which a criminal organization (including terrorist organizations) exercises a power of disposal (art. 59, ch.3, and art. 260 ter PC), irrespective of any evidence of the criminal origin of such property.

Appeal: The laws cited above also govern the appeal and review procedures as well as the competent authorities. Under the Federal Act on Penal Procedure, the

Indictment Chamber of the Federal Court has oversight of the Attorney-General of the Confederation and hears complaints against the Attorney-General and the federal examining magistrates. The acts and omissions of the Attorney-General and the examining magistrates may be the subject of a complaint to the Indictment Chamber of the Federal Court. The sequestration measures are a part of those acts and may therefore be the subject of such a complaint.

2. **Under the Anti-Money-Laundering Act (AMLA)**

Under **article 10 of AMLA**, a financial intermediary is obliged to block funds without notifying the owner when he notifies the Money Laundering Reporting Office (managed by the Federal Police Office) of a suspicion concerning money-laundering arising from a criminal activity, such as a terrorism-related activity. The account must remain blocked for five days reckoned from the date of the notification. On the expiry of the five days, the account is unblocked unless the Reporting Office transmits the case to the criminal prosecution authorities which may declare a judicial account blockage. In the context of the cases linked to the attacks of 11 September 2001, all notifications were transmitted to the criminal prosecution authority (Office of the Public Prosecutor of the Confederation).

B. Procedure for international judicial cooperation

Freezing of assets: A freeze is declared under the Federal Act on Judicial Cooperation in Criminal Matters. At the **cantonal level**, the freezing is declared by an examining magistrate or another judicial authority. At the **federal level** it is declared in particular by the Federal Justice Office, the Public Prosecutor's Office of the Confederation or the Directorate of Customs. In case of emergency, the immediate freezing of assets may be ordered.

Appeal procedures: Requests for judicial cooperation are for the most part **delegated to the competent cantonal court**. The latter issues a ruling in a conclusive decree. The procedures followed by the cantons may be challenged at two levels. The conclusive decree issued by a court of first instance may be challenged first before the highest competent cantonal court and then, through an administrative-law appeal to the Federal Court. An **incidental decision** in connection with cooperation, such as the **decision to declare a freeze** (which therefore precedes the conclusive decree), may be challenged either simultaneously or separately (at the cantonal level also in two courts, the first being the higher cantonal court) through an administrative-law appeal to the Federal Court, on condition that it causes immediate and irreparable harm to the claimant. A stay of judgement is granted only if the claimant makes such damage appear credible.

Requests for judicial cooperation which are **the responsibility of the federal authorities** may be the subject of an administrative-law appeal to the Federal Court. Earlier incidental decisions may also be the subject of an appeal in accordance with the procedure described above.

With respect to **extradition**, the freezing of funds in connection with the arrest of an individual may be challenged by means of a complaint to the Indictment Chamber of the Federal Court. This procedure applies to any decision connected with the detention of an individual.

C. Sanctions regime

Freezing of assets: A freeze may also be declared by a decision of the Federal Council (art. 184, para. 3, of the Federal Constitution), where so required to safeguard the country's interests, by means of time-limited decisions or orders. This is the legal basis that governed the independent implementation by Switzerland of the sanctions decided on by the Security Council at the beginning of the 1990s. Upon the date of entry into force of such an order, the funds are frozen. In addition to being regularly published in the official compilation of legal texts, these orders are made public by the State Secretariat of the Economy (Federal Department of the Economy) through the Internet and press releases. In the case of financial sanctions, the lists of individuals and corporate entities covered by such measures are transmitted without delay by the Federal Banking Commission to the compliance service of the head office of each banking institution in Switzerland. Any person holding or managing blocked funds is obliged to declare them immediately to the State Secretariat of the Economy. In case of doubt as to whether the funds are to be blocked or not, the financial intermediaries may seek any necessary clarifications from the State Secretariat of the Economy.

Appeal procedures: It is possible to appeal against a decision to block accounts although no appeal has ever been filed. In such a case, the State Secretariat of the Economy issues a declarative decision against which an appeal may be made, in the first instance, to the Secretariat of the Federal Department of the Economy.

Subparagraph (d): Non-governmental associations and organizations

Does Switzerland have a system for monitoring the financial activities of non-governmental associations and organizations operating in its territory, especially with respect to fund-raising?

In the context of criminal proceedings, banking secrecy is lifted by the court, and this permits oversight of the financial activities of the entity in question. Outside that framework, current Swiss legislation does not allow monitoring of the financial flows of non-governmental organizations, except as regards the United Nations sanctions mentioned above.

In order to be able to prohibit the financing networks of terrorist organizations in Switzerland, evidence must be produced, relevant to public safety, that the public interest takes precedence over the private interest. The measures taken, moreover, must also respect the principle of proportionality.

In recent years, measures have been taken in two cases in particular. In 2001, the Liberation Tigers of Tamil Eelam was forbidden to collect funds and engage in propaganda activities on the occasion of the commemoration of the "Day of Heroes". In addition, following the terrorist attacks of 11 September 2001, Al-Qaida as a whole and all other partner organizations, or other such organizations created subsequently, were prohibited.

In addition to the possibilities afforded by criminal proceedings, organizations' funds can be blocked by order of the Federal Council (see subpara. 1 (c) (C)). As at 31 May 2002, 69 bank accounts totalling 34 million Swiss francs had been blocked in accordance with Security Council resolution 1390 (2002) and the preceding resolutions.

Paragraph 2 of the resolution

Subparagraph (b): Counter-terrorism body and coordination

1. *Does Switzerland have a **body** (in addition to the Task Force Terror USA mentioned in the report) that specializes in counter-terrorism, or is this the responsibility of a number of departments or agencies? In the latter case, how is **coordination** between the various entities effected?*

Parallel to the Task Force Terror USA, an interdepartmental group on terrorism, comprising the relevant offices of the various federal departments, has been charged with coordinating the efforts to combat terrorism; in particular, this group reviewed the compatibility of the Swiss legal system with Security Council resolution 1373 (2001). The group is coordinated by the **Department of Foreign Affairs** (Directorate of Public International Law), and is composed of members of the **Department of Defence, Civil Protection and Sports**, the **Department of Justice and Police** (police, Public Prosecutor's Office, penal law, judicial assistance, law on aliens and on refugees), the **Department of the Economy** (State Secretariat of the Economy; Security Council resolution 1390 (2002)) and the **Department of Finance** (anti-money laundering). It also includes representatives of the **Federal Banking Commission**. Representatives of the Task Force Terror USA also attend the meetings. A subgroup of the interdepartmental group meets regularly to adopt operational decisions tied to recent events.

2. *Does each such agency establish its own **strategy** independently or does it carry out measures that have been established at a higher level? **Who determines that policy** and, if applicable, the distribution of tasks among agencies?*

The formulation of the anti-terrorism strategy emanates from the Federal Council, which relies on its **Commission on Security** (comprising the heads of the Department of Foreign Affairs, the Department of Justice and Police and the Department of Defence, Civil Protection and Sports) at the political level and on the **Administrative Committee on Security**, as a senior staff body, at the technical level.

Subparagraph (e): Definition of a terrorist act and anti-terrorism policy

*In the absence of legislation on terrorism, what are the legal criteria defining a **terrorist act** in Switzerland? How are such acts distinguished from other offences and crimes? How does Switzerland plan to create an **anti-terrorism policy** as distinguished from its general policy on crime?*

In Swiss law there are many penal norms applicable to **terrorist acts and their financing**. There are, for example, provisions relating to the following offences: murder (art. 112 of the Penal Code (PC)), hostage-taking (art. 185 PC), use of explosives with criminal intent (art. 224 PC), spreading of an illness to humans (art. 231 PC). All of these offences carry prison terms. Heavy penalties are provided, in particular, where a criminal act endangers the lives and physical integrity of several persons or causes major damage. If the offence is committed in the context of terrorism, the gravity of the terrorist act may be taken into account in sentencing. Instigation, complicity and attempt are punishable. Article 260 bis PC (acts preparatory to the commission of an offence) makes it possible to prosecute and punish anyone who, in accordance with a plan, makes specific technical or

organizational arrangements for committing a particularly reprehensible act (murder, assassination, serious physical injuries, banditry, hostage-taking, kidnapping and abduction, and arson). This legal provision effectively strengthens the fight against violent crime by enabling the police and the courts to intervene very early to put a stop to dangerous situations. Article 260 ter PC makes membership and support of criminal organizations punishable as a penal offence. While Switzerland now has a broad array of instruments at its disposal that can be applied in cases involving terrorist activities and financing, new legal provisions (terrorism and its financing) are currently in preparation (see subpara. 3 (c) (a)) with a view to the ratification of the International Convention for the Suppression of the Financing of Terrorism and with the aim of increasing and strengthening Switzerland's capacities to combat terrorism.

Subparagraph (f): Direct procedures for judicial assistance/refusal/appeal/time needed for implementation of a request for judicial assistance

a. *Does Switzerland have direct procedures for judicial assistance (the so-called "judge-to-judge" procedure) or are such procedures routinely carried out through diplomatic channels?*

Switzerland has thus far institutionalized direct procedures for judicial assistance in penal matters (direct contact between the judges involved) with four neighbouring States. In this context, the European Convention on Mutual Assistance in Criminal Matters, in case of emergency, allows the judicial authorities of the requesting party to send commissions rogatory and evidence pertaining directly thereto to the judicial authorities of the requested party. Moreover, Swiss domestic law also authorizes direct procedures in case of emergency.

It should be noted that with regard to Switzerland's establishment of a **sanctions regime** (see subpara. (1) (c), (C) and (D) above), the provision of administrative assistance to foreign authorities and the United Nations is envisaged in all ordinances.

b. *Can Switzerland refuse judicial assistance? If so, on what grounds?*

The Swiss legal system provides that a request for cooperation in penal matters is inadmissible if it does not meet a minimum standard of protection, as defined, in particular, by the International Covenant on Civil and Political Rights or the Convention for the Protection of Human Rights and Fundamental Freedoms, or if it would conflict with recognized norms of public international law.

Within the meaning of the provisions of some Council of Europe instruments, in particular, a request for cooperation is refused if the procedure involves a predominantly political act, constitutes a violation of military or similar obligations, or appears to be directed against the national defence or defensive capacity of the requesting State; **it is important to point out, however, that the contention that an act is political is always inadmissible if the act**:

- Is intended to destroy or oppress a population group on the ground of its nationality, race, religion or ethnic, social or political affiliation;
- Seems particularly reprehensible because the author, for purposes of extortion or coercion, has endangered or threatened to endanger the freedom, life or

physical integrity of individuals, in particular, by hijacking aircraft, taking hostages or the use of weapons of mass destruction;

- Constitutes a serious violation of international humanitarian law within the meaning of the Geneva Conventions and the Additional Protocols thereto.

Lastly, under Swiss law, a request is inadmissible if the procedure involves an act which appears intended to diminish tax revenues or which contravenes monetary, trade or economic policy measures; nevertheless, action may be taken on a request for cooperation if the proceeding involves tax fraud. In practice, taking into account the case-law of the Federal Court, such requests are always acted upon when they fulfil the conditions for cooperation.

Switzerland is among the States which cannot grant extradition if the individual concerned has been sentenced to death, if the sentence is to be carried out, and if the wanted individual is treated in a way that impairs his or her physical integrity.

c. *Could Switzerland please outline the procedures for appealing against a request for judicial assistance, in particular with respect to requests addressed to banks for financial information? Please enumerate and describe any recourse procedures.*

The procedure described under subparagraph 1 (c) (B) is the recourse procedure most often used.

It should also be pointed out that in cases involving the sovereignty, security, public order or other basic interests of Switzerland, the recourse authority is, in the first instance, the Department of Justice and Police, and second, the Federal Council. In the case of requests for a guarantee of reciprocity, choice of appropriate procedure or admissibility of a Swiss request, the Federal Justice Office adjudicates in the first instance, and then the Department of Justice and Police issues a final ruling on appeal.

With regard to the extradition of an individual and, accordingly, the transmittal of objects and assets pertaining to that individual, a decision on extradition can be impugned by means of an administrative-law appeal to the Federal Court.

How long does it take on average to implement a request for judicial assistance in simple matters (requests for information) and complex ones (banking investigations, questioning)?

Swiss law expressly provides an **obligation of promptness** in handling requests for judicial cooperation in penal matters. The competent authority is required to handle requests promptly, to take decisions without delay and to inform the Federal Justice Office, at its request, of the status of the procedure, the reasons for any delay and the measures envisaged. In case of unwarranted delay, the Office may approach the competent supervisory authority; if the competent authority refuses, without grounds, to take a decision or delays in announcing its decision, its conduct is taken to be a tacit refusal that is subject to appeal.

The requests received propose a range of measures of implementation. Accordingly, in simple matters, a judicial assistance procedure may take three to six months on average. In complex cases, however, depending on the scope of the requests for judicial assistance, the extent of the investigations to be undertaken in

Switzerland, the filing of supplementary requests and the use of recourse procedures, the duration of a judicial assistance procedure may vastly exceed a year. In the area of extradition, the Swiss system ensures effective cooperation, and the average duration of the procedure rarely exceeds a year.

Paragraph 3 of the resolution

Subparagraph (c)

a. *Please indicate when Switzerland expects to ratify the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.*

The Swiss Government recently approved the message regarding the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism and the one regarding the amendment of the Swiss Penal Code. On 26 June 2002 it submitted the message and the respective legislative drafts to Parliament with a view to enabling Switzerland to become a party to both conventions by the end of 2002, at the same time as the new legislation enters into force.

Parliament will consider the report of the Swiss Government on the ratification of the two conventions through an expedited procedure in late August and early September 2002. Once Parliament has approved the two conventions and adopted the implementing legislation, it will, like any amendment to federal legislation, be submitted to an optional referendum. If, within three months, 50,000 Swiss citizens wish to make use of the referendum, the Swiss people as a whole will be able to express their views on the subject in a public vote. If there is no referendum, Switzerland can become a party to the conventions upon the expiry of the referendum period of three months.

b. *The CTC would be grateful if Switzerland could provide it with a list of those countries with which it has concluded relevant bilateral agreements.*

Switzerland has ties with many States on the basis of instruments concluded within the Council of Europe, which comprises more than 40 States. In particular, it is a party to the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition and the Convention on the Transfer of Sentenced Persons.

Switzerland is also eager to extend its network of bilateral treaties in these areas to the global level. It has concluded treaties on judicial assistance in penal matters with Australia, Canada, Ecuador, Egypt, Hong Kong, Peru and the United States.

More of a determining factor, in that it is also possible for Switzerland to cooperate without a multilateral or bilateral instrument: the answer to this question should be considered in the light of the above, namely, that it is possible for Switzerland to cooperate with any country provided that the requesting State respects the procedural guarantees established by the International Covenant on Civil and Political Rights or the European Convention on Human Rights, as well as recognized norms of public international law and reciprocity in general. Furthermore, it should be noted that the law on international penal assistance does not limit cooperation to a list of offences; international judicial assistance in penal

matters can, in principle, be granted for any penal offence, including one under administrative penal law.

Subparagraph (e): International conventions and bilateral agreements

The CTC would welcome an indication whether the crimes mentioned in the relevant international conventions have been included as extraditable offences in the bilateral treaties which Switzerland has concluded with other countries.

Switzerland does not limit extradition to a list of offences. Extradition can be granted if the offence carries a prison term of at least one year, or a more severe penalty, under Swiss law and the law of the requesting State and is not subject to Swiss jurisdiction.

The offences contained in the United Nations anti-terrorism conventions fulfil this condition and have, since Switzerland's ratification of the instrument in question, been regarded as giving rise to extradition. The same applies to the bilateral extradition instruments concluded by Switzerland. On principle, terrorist offences are covered by these instruments.

Subparagraph (g)

1. *Switzerland should inform the CTC of the implementation of the measures that it intends to take during 2002, as listed in its report under this item.*

Status of the measures taken or to be taken by Switzerland (see our report of 19 December 2001 (S/2001/1224)):

1. Accession to the International Convention for the Suppression of Terrorist Bombings;

2. Ratification of the International Convention for the Suppression of the Financing of Terrorism;

See subparagraph 3 (c) (a).

3. Implementation of the special recommendations to strengthen measures to prevent terrorist financing adopted by FATF in the wake of the attacks of 11 September 2001;

Mention should be made of the priority attached to the efforts for ratification of the two United Nations conventions and the establishment of a penal norm on terrorism associated therewith (see the first two recommendations adopted by FATF). In addition, the Swiss provision is in keeping with the FATF recommendations.

4. Linking all Swiss diplomatic missions to the computer-based visa issuance system in order to enhance the efforts to combat falsified documents;

The introduction of the **computer-based visa issuance system** and the project for the creation of **forgery-proof alien residence permits** (see subparagraph 2 (g) of document S/2001/1224) are proceeding as planned.

5. Forthcoming revision of the Penal Code to provide for the primary responsibility of entities for certain offences (organized crime: art. 260 ter PC; money-laundering: art. 305 bis PC; bribing of Swiss public servants: art. 322

ter PC; granting of an unfair advantage: art. 322 quinquies PC; bribing of foreign public servants: art. 322 septies PC);

The question of the responsibility of entities for the above-mentioned offences has already been considered by Parliament. It is anticipated, moreover, that the responsibility of entities will be extended to terrorism and the financing of terrorism. These legal provisions should enter into force at the same time as the International Convention for the Suppression of the Financing of Terrorism (see subparagraph 3 (c) (a)).

2. *In view of the call in subparagraph 3 (g) for States to "ensure, in conformity with international law, ... that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists", please indicate whether* ***Switzerland's reservation in the European Convention on the Suppression of Terrorism*** *done at Strasbourg on 27 January 1977 reflects current practice and whether Switzerland has any intention to consider the matter further.*

It is true that Switzerland formulated a reservation to the European Convention on the Suppression of Terrorism, but in practice this reservation is not an obstacle to judicial cooperation, especially when it concerns offences covered by the anti-terrorism conventions.

In fact, Swiss domestic law expressly provides that the contention that an act is political cannot be invoked if the act is intended to destroy or oppress a population group, seems particularly reprehensible because the author has endangered or threatened to endanger the freedom, life or physical integrity of individuals for purposes of extortion or coercion, or constitutes a serious violation of international humanitarian law (see subparagraph 2 (f) (b)). The use of terrorist methods as defined by the above-mentioned instruments cannot, on principle, be assimilated to a protected political offence, particularly because the use of such methods can affect innocent third parties and because sowing terror is frequently a goal of the offence and, consequently, the criterion of proportionality that is examined in connection with a political offence is not met.

Paragraph 4 of the resolution

International crime

Has Switzerland addressed any of the concerns expressed in paragraph 4 of the resolution?

> *("The Security Council notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security")*

The effort to combat international terrorism and its interactions with the criminal activities underlying it has long been a concern of Switzerland and represents one of its action priorities at both the international and the domestic levels. This threat can only be countered through cooperation between States. Switzerland participates actively in the fight against terrorism in different

international forums. It has made consistent efforts within the United Nations and the Organization for Security and Cooperation in Europe (OSCE) to promote effective instruments to combat illicit trafficking in light weapons. It collaborates closely at the bilateral level through police and judicial assistance, particularly with the United States. Switzerland's legal instruments enable it to punish the criminal activities that are at the origin of terrorist acts, and it has strategic and operational structures in place in order to prevent and respond to the threat of terrorism.

In particular, in the field of international judicial cooperation in penal matters, Switzerland makes every effort to combat international crime as effectively as possible, particularly its most serious forms, such as international terrorism, organized transnational crime, drug trafficking, money-laundering, arms trafficking and illegal transfers of nuclear, chemical, biological and other lethal substances. Swiss legislation makes it possible to block criminal assets rapidly. As explained under subparagraph 3 (c) (b), it is possible for Switzerland to cooperate without a multilateral or bilateral international instrument.

The efforts of the police authorities to combat terrorism and transnational organized crime are carried out at the federal level through a common office. Efforts to combat the proliferation and international trafficking of drugs, weapons and persons, as well as money-laundering, are also the responsibility of that office. Lastly, there are legal provisions in the area of sequestration of assets and money-laundering that apply both to terrorist groups and to organized criminal groups. Organizing these efforts around a common central authority ensures a better exchange of information at the national and international levels.

In terms of legislation, Switzerland has signed the United Nations Convention against Transnational Organized Crime and intends to ratify it as soon as possible. On 2 April 2002, Switzerland also signed the two additional protocols to that Convention on illegal trafficking of migrants and trafficking of persons.

Lastly, Switzerland systematically adheres to the sanctions regimes adopted by the Security Council. As a member of all export control regimes, Switzerland is also very active in the area of non-proliferation of weapons of mass destruction.

Other matters

Could Switzerland please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

Federal Police Office:
http://internet.bap.admin.ch/e/portrait/Organigramme.pdf

Federal Aliens Office:
http://www.bfa.admin.ch/amt/portrait/organigramm_f.pdf

Federal Banking Commission:
http://www.ebk.admin.ch/f/portrait/fgramm.pdf

Office of the Public Prosecutor of the Confederation:
http://www.ba.admin.ch

Federal Customs Administration:
http://www.zoll.admin.ch/f/franz.htm

Federal Finance Administration:
http://www.efv.admin.ch/f/index.1.htm

State Secretariat of the Economy:
http://www.seco-admin.ch/seco/seco2.nsf/Atts/
secoInKuerze_org/$file/Organigramm_f.pdf

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Security Council

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/464).

The Counter-Terrorism Committee has received the attached supplementary report from Saudi Arabia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001)concerning counter-terrorism

02-51351 (E) 160802 190802

Annex

Letter dated 10 July 2002 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Arabic]

I have the honour to transmit to you herewith a report from the Government of the Kingdom of Saudi Arabia, submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001, in response to the comments of the Counter-Terrorism Committee.

(*Signed*) Fawzi Bin Abdul Majeed **Shobokshi**
Ambassador
Permanent Representative

Enclosure

Report of the Kingdom of Saudi Arabia in response to the comments contained in the letter dated 18 April 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Arabic]

Subparagraph 1 (a):

• Could Saudi Arabia please outline any legislative changes or new practical measures introduced since the adoption of the Resolution.

The measures introduced since the adoption of the resolution include the signing by the Government of Saudi Arabia, on 29 November 2001, of the International Convention for the Suppression of the Financing of Terrorism. A standing committee of the relevant State agencies has also been established to consider requests relating to counter-terrorism that are submitted by States, international organizations and other entities in the light of the Security Council resolutions relating to counter-terrorism. One contact point has been designated in the Ministry of Foreign Affairs and another at the Permanent Mission to the United Nations, in accordance with the programme of work of the Counter-Terrorism Committee and with a view to fostering international cooperation in countering terrorism and implementing resolution 1373 (2001).

• Please outline the legislation and procedures which exist for monitoring suspicious financial transactions, apart from the recent regulations related to the UN lists of terrorists. What are the vigilance (transaction-reporting) obligations of financial intermediaries, including those outside the financial sector (e.g. lawyers), that contribute to the prevention of economic and financial operations with terrorist or other criminal aims? What are the penalties which may be incurred, and have any already been imposed?

Saudi Arabia has had procedures for monitoring suspicious financial transactions, based on the instructions issued by the Saudi Arabian Monetary Agency (SAMA), since before the incidents of 11 September 2001. The measures taken by SAMA include requiring local banks and money changers to report suspicious financial transactions to the security agencies and financial authorities. No financial operations with terrorist aims have thus far come to light in the country. In the case of other criminal aims, each crime has its penalty in accordance with the statute that governs it.

• Does Saudi Arabia have, or propose to enact, a Money-laundering Law?

Saudi Arabia is making major and perceptible efforts to counter money-laundering activities in all economic sectors and in the field of international and regional cooperation. The measures it has taken include:

1. Issuance of the regulations required for the implementation of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

2. Approval of the Forty Recommendations adopted by the Financial Action Task Force on Money Laundering (FATF) in 1999;

3. Formation of a standing committee of a number of governmental agencies, the Anti-Money-Laundering Committee, to be responsible for handling all matters connected with money laundering.

• Please provide a progress report on the establishment of the financial intelligence unit and an outline of its composition and activities.

There is a financial investigations unit that is concerned with international economic and financial crimes and is based in the Ministry of the Interior. The unit has branches throughout the country, and its function is to receive reports from banks and other financial institutions concerning suspicious financial transactions, to trace their sources and to investigate them with a view to applying the relevant statute to them.

• Do the regulations issued by the Saudi Arabian Monetary Agency (SAMA) have the force of law?

SAMA is an executive agency that supervises banks and other financial institutions in the country in accordance with the SAMA Statute promulgated by Royal Decree No. 23 of 23 Jumada I A.H. 1377 and the Bank Supervision Statute promulgated by Royal Decree No. 5 of 22 Jumada II A.H. 1386, which together constitute the law in force. SAMA frames the regulations governing banking activities in accordance with the provisions of the two statutes indicated.

Subparagraph 1 (b):

• It is not clear from the report what legal or other provisions exist in Saudi Arabia for the suppression of the financing of terrorism. Please outline any such provisions.

For its statutes, the Kingdom of Saudi Arabia relies on Islamic law. The financing of terrorism falls into the category of "spreading evil on earth" (*al-ifsad fi al-ard*). This may incur the non-discretionary *hadd* penalty for hirabah (brigandage), which can sometimes mean the application of the death penalty. Saudi Arabia has ratified the 1998 Arab Convention for the Suppression of Terrorism and the 1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism. By article 3 of each of these conventions, contracting States undertake not to organize, finance or commit terrorist acts, and the two conventions have become part of the Kingdom's domestic legislation. Saudi Arabia is also one of the signatories of the International Convention for the Suppression of the Financing of Terrorism.

• Could Saudi Arabia please provide information on any successful prosecutions involving the provision of financial assistance for the carrying out of terrorist acts, whether within or outside the territory of Saudi Arabia?

There have been no successful prosecutions involving the provision of financial assistance for the carrying out of terrorist acts, whether within or outside the territory of Saudi Arabia.

Subparagraph 1 (c):

• It is noted that Saudi Arabia has a body, the SAMA, which can freeze bank accounts in certain circumstances. Are there any generally applicable procedures for the freezing and provisional seizure of criminal funds and assets

for offences relating to terrorism and its financing? Please distinguish between freezing and seizure occurring in the course of investigations and confiscation or forfeiture ordered upon sentencing.

In the absence of a precise and unequivocal definition of terrorism endorsed by the international community, in Saudi Arabia measures for the freezing and seizure of funds can only be taken in accordance with specific statutory procedures and on the basis of a request from the Minister of the Interior addressed to the Minister of Finance and National Economy. Confiscation may only take place on the basis of a judgement issued by a competent court against a perpetrator, and all requests for seizure and confiscation are addressed to SAMA as the agency that supervises and monitors banks.

• Could Saudi Arabia please indicate how, and by what authorities, these procedures are carried out. In particular, what practical mechanisms are in place for acting upon suspicious money transfers?

As part of the practical mechanisms in place for acting upon suspicious money transfers, SAMA has required banks and other financial institutions to report any suspicious financial transactions to the relevant security authorities, using a standard reporting form and providing SAMA with a copy, so that those authorities can take the appropriate steps.

Subparagraph 1 (d):

• It is noted that Saudi Arabia has specific provisions to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations. Please provide more information about:

- **the respective roles of the Ministry of Justice and Social Affairs and the High Committee on Fund-raising in dealing with this task, their powers and the actions that have been taken by them; and**
- **the mechanisms for verifying that the end use of funds is as specified by the organizations when the transfers are originally made.**

The Ministry of Justice has no role with respect to fund-raising, and it is the Ministry of Labour and Social Affairs that grants permits to charitable associations. No entities or individuals other than charitable associations registered with the Ministry and under its supervision may collect contributions, and they must do so in accordance with the monitoring procedures to ensure that funds are collected properly and are passed on to beneficiaries inside the country.

The role of the High Committee on Fund-raising is restricted to approving the transfer abroad of funds collected for charitable purposes in Saudi Arabia.

The mechanisms for verifying that the end use of funds is as specified by the organizations when the transfers are originally made are the procedures for monitoring movements in the associations' accounts and the auditing of their annual budgets by certified public accountants. For many years the agency concerned has required operations involving the revenues and expenditures of charitable associations to be conducted only by cheque and on the basis of formal receipts. A charitable association is also obliged to serve the areas of the country specified in its founding statute, that is to say that a charitable association may not make disbursements for beneficiaries in areas of the country other than those covered by

its services. The Charitable Associations Regulation provides that the activities of these associations are restricted to the country itself.

• Could Saudi Arabia please provide a detailed outline of its anti-terrorist legislation. Please also make clear, in particular, what types of acts preparatory to an act of terrorism are criminalized by laws of Saudi Arabia, and outline the relevant laws.

Reference has already been made, in the response under subparagraph 1 (b), to the country's counter-terrorism legislation. Saudi Arabia has also become a party to a number of international, regional and bilateral agreements in the counter-terrorism field. In the country's statutes, the acts preparatory to an act of terrorism that are criminalized are those such as the provision or collection of funds for use in acts of terrorism and assistance in or incitement to commit acts of terrorism.

• Does Saudi Arabia have any provisions for regulating alternative money transfer agencies (such as those known as "hawala")? Please outline these provisions.

The bank monitoring regime in Saudi Arabia regards "hawala" as one of the banking services that only banks are permitted to provide. Such services outside the banking sector are criminalized and those who perform them are subject to a fine, or imprisonment for a term of two years, or both.

Subparagraph 2 (a):

• Please provide a detailed outline of the legislation aimed at prohibiting the establishment of paramilitary groups in Saudi Arabia. Please outline any legislation aimed at prohibiting or limiting the acquisition or possession of weapons both within and outside Saudi Arabia.

The 1981 Arms and Ammunition Statute and its implementing regulation impose tight restrictions on the manufacture, importation, sale, possession, circulation and acquisition of weapons and ammunition in Saudi Arabia. This has helped ensure that there are no paramilitary groups in the country.

Subparagraph 2 (b):

• Does Saudi Arabia have a body that specializes in counter-terrorism, or is this the responsibility of a number of departments or agencies? In the latter case, how is coordination between the various entities effected?

Saudi Arabia has two agencies to which counter-terrorism tasks are assigned. They are the General Information Service (Jihaz al-Istikhbarat al-Ammah) and the Ministry of the Interior, as represented by General Intelligence (Al-Mabahith al-Ammah). Coordination between these two entities is effected as follows:

(a) Holding of periodic meetings between officials of the two entities concerned with counter-terrorism;

(b) Exchange of information on counter-terrorism and ongoing contacts and consultation in this regard.

• Does each agency define its strategy independently, or does it carry out measures that have been established at a higher level? Who determines that policy and, if applicable, the distribution of tasks among agencies?

Each agency defines its strategy independently in the light of the general policy laid down for both of them by the Council of Ministers, [which also determines] the distribution of counter-terrorism tasks assigned to each agency.

• Beside exchange of information, are other steps being taken to prevent the commission of terrorist acts in accordance with the Resolution?

Among the steps being taken by Saudi Arabia to prevent the commission of terrorist acts are its participation in the Arab expert group meeting held at the headquarters of the League of Arab States on 13 January 2002 to examine Security Council resolution 1373 (2001). The report and recommendations adopted by the expert group were endorsed by the Arab Summit Conference held in Beirut on 10 March 2002. Saudi Arabia has designated one contact point at the Ministry for Foreign Affairs and another at the Permanent Mission to the United Nations in New York with a view to facilitating international cooperation in confronting terrorism and the implementation of resolution 1373 (2001). On the basis of the relevant lists established by the Security Council, Saudi Arabia freezes the funds, financial assets and economic resources of persons who commit acts of terrorism.

• Please explain whether there is any mechanism to provide early warning to other countries on terrorist acts that could be committed in the countries concerned.

• Could Saudi Arabia please describe its action in the field of police cooperation.

Saudi Arabia is committed to promoting the concept of security cooperation with all States through bilateral, regional and international agreements and the principle of reciprocity in matters relating to counter-terrorism.

Subparagraph 2 (c):

• Please outline the main provisions of Saudi Arabia's legislation relating to immigration control and the granting of the right of asylum, and indicate how criminal groups are prevented from abusing those provisions. Please also outline the conditions for the issuance of identity documents, particularly passports, to aliens.

The Residence Statute provides that the admission of an alien to the Kingdom shall be regarded as lawful only if he is in possession of a valid passport issued by the government of his country or a document that the Government of Saudi Arabia considers to be the equivalent of a passport. He may not enter the country or reside in or pass through its territory unless his valid passport or travel document bears an entry visa granted by the overseas consular or diplomatic authorities of Saudi Arabia and it is ascertained that the document in question bears no entries that might prevent such admission, residence or transit.

Saudi Arabia's Basic Law of Government (Constitution) also stipulates that the State grants the right of political asylum only when the public interest so requires.

The Residence Statute contains provisions to prevent its abuse by criminal groups, one such being that in all cases where an alien is permitted to enter, pass through or travel or reside in the country he must not be a person regarded as undesirable.

In connection with procedures for the issuance of passports to aliens, the Travel Documents Statute provides that the Minister of the Interior may, in case of need, issue a temporary passport or laissez-passer to any person who does not have Saudi citizenship to be used for travel outside the country and re-entry. The implementing regulation specifies the cases in which such documents may be issued and withdrawn and where a wife and children may be added to them. The Travel Documents Statute also provides that a Saudi Arabian passport is granted to a person who does not have Saudi nationality in order to facilitate his overseas travel and subsequent re-entry and that it does not mean that the bearer has the rights of a Saudi citizen or that it can be accepted as proof of identity inside the country for action on that basis. For a Saudi passport to be granted to an alien it must be ascertained:

1. That the status of the resident is regular;
2. That the information to be entered in the Saudi Arabian passport accords with that in the foreign passport;
3. That the Saudi passport is retrieved from the alien on expiry or when instructions are given for its withdrawal;
4. That the foreign passport is withheld when the Saudi passport is granted;
5. That the alien to whom a Saudi passport is granted gives an undertaking not to use it for any purpose other than overseas travel, given that the passport is only a means to facilitate his movement from one country to another, and that he is to be held accountable for any contravention.

Subparagraph 2 (e):

• What is the extent of the competence of the courts of Saudi Arabia to deal with terrorist acts, or preparations for terrorist acts, that occur outside its territory?

The courts of Saudi Arabia are competent to deal with all crimes, including terrorist crimes and attempts to commit acts of terrorism. The question of terrorist acts, or preparations for terrorist acts, that occur outside its territory falls within the scope of the relevant bilateral, regional and international agreements.

• Are the relevant provisions of the Penal Code of Saudi Arabia applicable in all of the following circumstances:

- **acts committed outside Saudi Arabia by a person who is a citizen of, or habitually resident in, Saudi Arabia (whether that person is currently present in Saudi Arabia or not);**
- **acts committed outside Saudi Arabia by a foreign national who is currently in Saudi Arabia?**

Should a citizen of Saudi Arabia commit terrorist acts outside its territory and should he currently be present outside the country, the Kingdom would seek his extradition for trial in accordance with the relevant bilateral, regional or international agreements. Should such a person be present in Saudi Arabia, he would be brought to trial when it was determined that he had committed acts of terrorism under the statute in force in the country.

In the case of a resident who commits acts of terrorism outside the country, the Kingdom would not seek to bring him to trial since he is not a citizen of the country. In the event that a resident commits a crime outside the country, returns to the country and is sought by the other State, Saudi Arabia would consider extraditing him to the requesting State in accordance with existing agreements between it and that State.

In the case of an alien who commits acts of terrorism outside Saudi Arabia, the Kingdom would not seek to bring him to trial since he is not a citizen of the country. If an alien commits a crime outside Saudi Arabia, is currently present in the country and is sought by the other State, Saudi Arabia would consider his extradition to the requesting State in accordance with the agreements it has with that State.

Subparagraph 3 (b):

• Please clarify whether Saudi Arabia has any legislation for providing mutual assistance to other countries in regard to criminal investigations and judicial proceedings, and outline the content of the legislation.

Saudi Arabia's bilateral agreements on security cooperation, counter-terrorism and the extradition of suspects and convicted persons contain provisions for the exchange of names of citizens of either party who are convicted of serious crimes or are in preventive detention in connection with serious crimes. They provide for assistance with the investigation and prosecution of cases in either of the two countries where an accused person, a witness or a victim is present in the territory of the other party.

• To what bilateral or multilateral agreements in the field of judicial assistance and extradition is Saudi Arabia a party? What are the legal procedures required by Saudi Arabia for the execution of a request by another country for assistance or extradition?

Saudi Arabia has become a party to a number of bilateral, regional and international agreements on the provision of assistance to other States in criminal investigations and judicial proceedings.

The bilateral agreements in the field of judicial assistance and extradition include:

Agreements on security cooperation and the extradition of offenders between Saudi Arabia and States members of the Gulf Cooperation Council;

Agreements on security cooperation with a number of other Arab countries.

The regional and international agreements in the field of judicial assistance and extradition are as follows:

Riyadh Agreement on Judicial Cooperation;

Security Agreement between the States members of the Gulf Cooperation Council;

Arab Convention for the Suppression of Terrorism, 1998, which has a separate section identifying aspects of judicial cooperation among States members of the League of Arab States in matters relating to counter-terrorism;

Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999;

Nine of the international counter-terrorism conventions.

The legal procedures required by Saudi Arabia for the execution of a request by another country for assistance or extradition depend on the agreement (international, regional or bilateral) it has signed with other States as well as on reciprocity.

Extradition procedures are as follows:

A written request is submitted to the competent authority in Saudi Arabia through the diplomatic channel together with an extradition dossier with the following enclosures, certified by the competent authority:

1. A detailed statement of the identity of the person whose extradition is being sought, including his description and nationality and, if possible, a photograph;

2. The arrest warrant for the person whose extradition is being sought or any other document having the same legal force issued by the competent authorities; or the original or an official copy certified by the competent authorities of the party requesting extradition of the verdict rendered in accordance with the conditions established by the law of the requesting party;

3. A memorandum giving the date and place the acts for which extradition is being sought were committed, their description and the legal and statutory provisions applicable to them, together with a certified copy of the relevant texts, a summary of the depositions that were taken and a statement by the investigating authority of the evidence against the person whose extradition is being sought.

Judicial assistance is given in the following manner:

The ministries of justice of Saudi Arabia and the other contracting party receive requests for cooperation in the matters where assistance is being sought and each ministry designates a competent authority:

1. To take receipt of and follow up on the [request for] judicial assistance where the requesting party is not resident in the requested State;

2. To take receipt of the letters rogatory sent to it by the judicial or other competent authority of the other State for execution;

3. To take receipt of the requests for depositions and service of documents sent to it by the competent authority of the other State for execution.

Subparagraph 3 (c):

• Could Saudi Arabia please provide particulars of the extradition and mutual legal assistance treaties that Saudi Arabia has concluded, and is negotiating, with other countries?

Reference has already been made to the extradition and mutual legal assistance treaties Saudi Arabia has concluded with other countries. There may be a specific

treaty on the extradition of offenders or judicial cooperation, or questions of extradition and mutual assistance may be addressed in other agreements such as those on counter-terrorism and security cooperation.

Subparagraph 3 (d):

• The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Saudi Arabia in:

- **becoming a party to the instruments to which it is not yet a party; and**
- **enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.**

There are only three international conventions relating to terrorism to which Saudi Arabia is not yet a party, and they are currently before a special inter-agency committee for consideration. They are as follows:

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973;
2. Convention on the Physical Protection of Nuclear Material, 1980;
3. International Convention for the Suppression of Terrorist Bombings, 1997.

In connection with the enactment of legislation and the adoption of other necessary arrangements to implement the instruments to which it has become a party, the situation is that after Saudi Arabia accedes to any instrument a royal decree is issued endorsing that instrument and communicating it to the relevant authorities for implementation and appropriate action.

Subparagraph 3 (e):

• Please outline the provisions of domestic law which give effect to the seven international conventions and protocols relating to terrorism to which Saudi Arabia is already a party, as mentioned in the report.

All of the international conventions and protocols relating to terrorism to which Saudi Arabia has become a party are endorsed by royal decree after consideration by the Council of Ministers and the Shura (Consultation) Council. They are then referred to the authorities concerned to be implemented by each in its own area of jurisdiction. By virtue of such a royal decree the instrument in question becomes part of the Kingdom's domestic legislation.

• Have the offences set forth in the relevant international conventions and protocols been included as extraditable offences in the bilateral extradition treaties to which Saudi Arabia is party?

Saudi Arabia incorporates in its bilateral extradition treaties a provision relating to counter-terrorism, and either party to the treaty may request extradition when an offence relating to terrorism has been committed.

Subparagraph 3 (g):

• Please could Saudi Arabia outline the legislation, procedures and mechanisms in place, or proposed, to give effect to these subparagraphs.

Reference has already been made, in the reply under subparagraph 1 (a) in the present report, to the procedures and mechanisms in place. They include the formation of a standing committee of the agencies relevant to counter-terrorism, and the implementation of these subparagraphs has been assigned to that committee.

• Is political motivation recognized as a ground for refusing requests for the extradition of alleged terrorists?

Saudi Arabia complies with the provisions of the international, regional and bilateral counter-terrorism and extradition agreements to which it is a party in accordance with Islamic law, which is the basis of its system of governance. Offences relating to terrorism and the intimidation of innocent people are crimes punishable by law even if they are committed for political purposes or have political motives.

Paragraph 4:

• Has Saudi Arabia addressed any of the concerns expressed in paragraph 4 of the Resolution?

Among the measures already taken by Saudi Arabia to address the concerns expressed in paragraph 4 of the resolution are that it has become a party to a number of agreements, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the 2000 United Nations Convention against Transnational Organized Crime. In 1998 it also promulgated the regulations required for the implementation of the former Convention. Saudi Arabia has endorsed the Forty Recommendations adopted by FATF in 1999, and it has also approved its eight Special Recommendations concerning the financing of terrorism and charitable associations. It is in the course of promulgating a money-laundering statute. Saudi Arabia watches its borders, seaports and airports and subjects the entry of nuclear, chemical and biological materials and toxic gases to effective monitoring.

[Other matters:

• Could Saudi Arabia please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.]

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/521).

The Counter-Terrorism Committee has received the attached supplementary report from Estonia, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 24 July 2002 from the Permanent Mission of Estonia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Estonia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) of 28 September 2001 concerning counter-terrorism and has the honour to submit the attached supplementary report in accordance with the letter from the Chairman of the Counter-Terrorism Committee dated 1 May 2002 (see enclosure).

Enclosure

Supplementary report for the Counter-Terrorism Committee regarding the implementation of resolution 1373 (2001)

Estonia

In addition to the already presented (in accordance with UNSC Resolution 1373) Estonian report (27 December 2001), and pursuant to paragraphs 3 to 6 of the guidance note issued by the Counter-Terrorism Committee (CTC) on 26 October 2001 and the note issued by the CTC on 1 May 2002, Estonia is hereby providing a further supplementary report concerning the fight against terrorism and its financing in Estonia.

*** Sub-paragraph 1 (a):**

In Estonia, the financing of terrorism is not specified as a crime *expressis verbis*. However, according to Estonian legislation, the financing of terrorism is considered to be an integral part of a criminal offence, and therefore, the various forms of financing terrorism (*e.g.*: money laundering, the direct financing of a terrorist act as a means of supporting terrorism [laws specifying participation], and the organising of a criminal association, or belonging to one) are criminally punishable.

The Money Laundering Prevention Act § 2 defines "money laundering", and the definition conforms to the EU Directive 91/308 and the 40 recommendations of the Financial Actions Task Force. Money laundering has been criminalized with Criminal Code Article 148^{15} and in Article 394 of the Penal Code (to become effective on 1 September 2002). The activities of the persons obliged to fulfil the provisions of the Money Laundering Prevention Act are prescribed in Article 148^{8} of the Criminal Code and Articles 395 and 396 of the Penal Code. According to these provisions, any assets acquired through criminal activity are subject to confiscation, and the persons involved in these criminal activities are subject to criminal prosecution (punishable with a fine, or with imprisonment of up to 10 years).

The acquisition, storage, or marketing of property received through the commission of a criminal offence is punishable with a fine, or up to one year of imprisonment.

According to Article 196^{1} of the Criminal Code and Article 255 of the new Penal Code belonging to a permanent organization consisting of three or more persons, who share a distribution of tasks, and who deal with the commission of criminal offences of a first degree, or exercise unlawful influence on public authorities is punishable by 3 to 12 years' imprisonment. Therefore belonging to a terrorist entity is also considered as a crime.

Being an accessory to a crime is considered a crime in Estonia. Thus, the funding or supplying of any financial support for terrorist acts is also considered to be the committing a terrorist act. The penalties for such activities – imprisonment from 6 to 15 years – are stipulated in Estonia's Criminal Code Article 17 and Penal Code Article 22.

Financing of terrorism itself should be explicitly made a criminal offence. Therefore, existing *Money Laundering Prevention Act* needs to be supplemented. A work-group has been established for this project, and the deadline for presenting these legal amendments to the Government is 1 November 2002.

Sub-paragraph 1 (c):

1. In order to clarify matters, it should be noted that it is legally possible to arrest any assets during criminal proceedings, especially if the assets are related to the crime (Article 146 of the Code of Criminal Procedure). In addition to general clause in Article 146, assets can also be arrested on the basis of a special provision in Article 146[1] of the Code of Criminal Procedure if money laundering is suspected. Presently, only the investigative bodies (including the Financial Intelligence Unit) in pre-trial procedures and the court have the powers to arrest or freeze financial assets. The Financial Supervision Authority does not yet have the full powers for such actions.

When the International Sanctions Act will be implemented, the FSA, under a Government order, will also be able to prohibit any financial transactions with terrorists or terrorist entities. These powers will also include the right to freeze transactions with securities.

2. Chapter 35 of the Code of Criminal Procedure has stipulated provisions for international cooperation between countries. Estonia has concluded several international agreements with other countries and has also ratified the criminal conventions of the Council of Europe. According to the above-mentioned documents and Article 413 of the Code of Criminal Procedure the Minister of Justice, or a legal authority appointed by the Minister, can apply for the arresting of a person's assets in another country.

3. According to the draft International Sanctions Act, that is to be adopted in 2002, the Government will be able to prohibit any financial transactions with persons and entities associated with terrorism. According to Article 3 of the draft International Sanctions Act, the Government will have powers to prohibit any commercial activity, lending activity, money payments, transactions with securities, etc. with persons suspected in any kind of criminal activity on an international level. The Government will implement the international sanction with appropriate regulations.

* Estonian legal provisions on the basis of which the financing of terrorist activities is subject to criminal prosecution

- The international Convention for the Suppression of the Financing of Terrorism was ratified by the *Riigikogu* on 20 March 2002, and became effective on 22 April 2002.
- The financing of terrorism is a criminal offence according to Article 17, section 2 (participation) of the Criminal Code and Article 64[1] (terrorism) or Article 65 (a terrorist act committed against the representative of a foreign country).

See Criminal Code § 17, 64[1] and 65.

- Upon the implementation of the Penal Code, the financing of terrorism is a prosecutable crime according to § 22 section 3 (participant) and § 237 (terrorism) or § 246 (an attack against the life or health of an internationally protected individual).

See Article 22, 237 and 246 of the Penal Code and Article 146 of the Criminal Code (confiscation of assets) and 146[1] (confiscation of assets for the suspicion money laundering).

On the basis of a court warrant it is possible, according to the sections of Article 33 of the Criminal Code, to confiscate the means and tools for the commission of a crime and the assets acquired thereupon. Therefore, if a person is found to be guilty of supporting terrorists or participating in a crime, which has been committed to finance terrorism, then it is possible to confiscate the guilty person's assets, which were meant for financing terrorism, or assets to the extent of the financing of terrorism.

This is reflected in Criminal Code Article 33 (special confiscation) and 33[1] (the substitution of special confiscation).

Property which is suspected of being connected with money laundering is seized by the preliminary investigator conducting the legal proceedings in the criminal offence of money laundering in order to secure a request for international legal assistance, seizure or civil matter if other measures are exhausted.

Property shall be seized pursuant to the procedure provided for in the Code of Criminal Procedure on the basis of an order of a preliminary investigator or prosecutor and only with the consent of a judge.

The Code of Criminal Procedure provides for the sequestration of assets if money laundering is suspected (Article 146 and 146[1]).

If a terrorist act is committed on Estonian territory, and the financing of the terrorist act, within the concept of the UN convention dealing with the financing of terrorism, is done from outside the territory of Estonia, then the appropriate Estonian authorities will approach the authorities of the state in question for the freezing of the individual's assets. The freezing of an individual's assets, who is suspected of financing terrorism within Estonia, can be done through legal proceedings.

If a terrorist act is committed outside of Estonia, and the financing of the act, within the parameters of the UN convention dealing with the blocking of internationally supporting terrorism, is done on Estonian territory, Estonian authorities may approach other states for the freezing of the individual's assets.

Sub-paragraph 1 (d):

A financial institution as defined in the Credit Institutions Act is a financial institution, or a branch of a foreign financial institution as listed in the commercial register in Estonia.

A financial institution's definition is listed below:

1) An insurer, insurance agent, or insurance broker, as is defined in the Insurance Act (RT 1992, 48, 601; RT I 1995, 2628, 355; 1996, 23, 455; 40, 773; 1998, 61, 979);

2) An investment fund as defined in the Investment Funds Act (RT I 1997, 34, 535; 1998, 61, 979) etc.;

3) A professional securities market participant as defined in the Securities Market Act (RT I 1993, 35, 543; 1995, 22, 328; 1996, 26, 528; 1997, 34, 535; 1998, 61, 979).

The Money Laundering Prevention Act prescribes other undertakings that can be used for money-laundering purposes.

The following are undertakings which are not credit or financial institutions for the purposes of this Act but which can be used for money-laundering purposes:

1) Undertakings, of which the principal or permanent activity is transactions with real estate or the organization of gambling or lotteries, and undertakings that operate as intermediaries in such areas of activity;

2) Other undertakings which carry out or act as intermediaries for transactions of at least the value specified in subsection 7 (3) of this Act.

According to the Estonian law, charitable funds can operate in the form of either a non-profit organization or a foundation. Both of these entities are obliged to have formal book-keeping subject to the rules laid down in the Accounting Act, which is in compliance with the EU directives. These institutions have to present the annual accounts to either the register of non-profit organizations or the register of foundations. If there is a suspicion of criminal activity (incl. terrorism) in the activities of a charitable institution, the case will be handed over to the police or the prosecutor.

It is possible for non-resident persons and entities to hold funds (e.g. cash accounts) in Estonian financial institutions. However, it should be noted that according to the Money Laundering Prevention Act all financial institutions have to identify their clients on-the-spot. So each person or entity must have identified themselves at the particular financial institution in Estonia at least once, while opening the account.

There are not any specific acts of legislation dealing with the collection and use of the funds of charitable institutions. Their activities are regulated in the Act of Non-Profit Organizations and several acts of tax legislation.

There is no different treatment for residents or non-residents with regard to holding funds in financial institutions, provided that the identification of the client meets every requirement and the legal origin of the resources has been verified.

According to Article 7 paragraph 3 of the Money Laundering Prevention Act an undertaking, which is not a credit or financial organization for the purposes of Money Laundering Prevention Act, but can be used for money-laundering purposes (mentioned above), including money transfer agencies that receive from a client, more than 100 000 EEK in cash is obliged to fulfil the requirements of the Money Laundering Prevention Act (identifying the client, reporting to the Financial Intelligence Unit of any suspicious transfers, etc).

There is not any legislation in Estonia governing the alternative money transfer agencies, except for the MLPA.

Sub-paragraph 2 (d):

According to Article 258 and 259 of the Penal Code, illegal crossing of the borders of the Republic of Estonia, and the illegal transportation of aliens across the borders of the Republic of Estonia are punishable.

- Article 6 section 3 of the Security Authorities Act stipulates that the State Security Board will deal with these matters, and will investigate said matters. In the case of terrorist acts, the State Security Board will conduct the pre-trial investigations.
- Article 3 paragraph 1 section 1 of the Surveillance Act stipulates the following: "The function of the security agency is to gather information and to perform other functions which have been spelled out in this legislation, which are necessary for the prevention of crimes that are being planned or are in the process of being executed."

Sub-paragraph 2 (e):

All the relevant provisions of the Criminal Code of Estonia are applicable since Article 5 of the Criminal Code stipulates that the legislation is also effective for acts committed outside the legal boundaries of the territory regulated by this legislation if the act is defined as a punishable crime by local laws, or if no legal measures cover that area, and if:

1) The committer of the act, at the time of committing the act, was a citizen of the Republic of Estonia, or became a citizen after performing the act, or

2) The committer of the act, at the time of committing the act, was the citizen of another country, or a stateless person, who has been apprehended in the Republic of Estonia and is not subject to extradition.

According to the Estonian Penal Code:

1) The highest authorities of the Estonian state and the representatives of other states must be protected;

2) The state is on the same level as essential international organisations (UN, NATO, the sub-organisations and representations of the European Union).

According to the Penal Code, terrorism is a crime directed against the state. This can be defined as a crime which is not directed against the state as such, but which can seriously harm the activities of the state, and thereby the functioning of the state.

At the same time, the legislation stipulates concrete acts which deal with attacks aimed at other states (see Article 65 and 246 of the Penal Code).

Sub-paragraph 2 (f):

In 1997, Estonia became party to the European convention dealing with mutual assistance and the prevention of terrorism. International cooperation in connection with criminal legal proceedings is regulated by Article 10 of the Estonian Criminal Code. Estonia has concluded relevant agreements with Latvia, Lithuania, Ukraine, Russia, and Poland. On a Governmental level, a cooperation agreement has been

concluded with Finland for the prevention of crime, which simplifies the cooperation between the crime prevention agencies of the two states.

Article 397 of the Criminal Code stipulates that:

Requests for legal assistance in criminal matters shall be adjudicated on the basis of the international agreements of the Republic of Estonia. Legal assistance to states, with which an international agreement has not been made, shall be provided pursuant to the principles arising from the criminal conventions of the Council of Europe, which have been ratified, by the Republic of Estonia, and this Party.

Estonian law and international agreements determine the procedure for communication with pre-trial investigation authorities, prosecutor's offices, and courts of foreign states. Communication with a foreign state with which Estonia has not entered into an agreement shall take place solely through the Ministry of Foreign Affairs of Estonia.

Applications by pre-trial investigation authorities, prosecutor's offices, and courts of foreign states **for the execution of procedural acts**, if such acts are subject to enforcement, shall be prepared and formalized in accordance with Estonian law, unless otherwise provided for in international agreements.

Sub-paragraph 2 (g):

According to Article 22 of the Security Authorities Act state and local officials, just as all individuals with an official status, must provide assistance to law enforcement agencies, within the scope of their competence. According to Article 31 of the same Act, a security authority may, in the process of performing its duties, approach the state, or a local administration, or an official to obtain information concerning an individual if the information is not available from generally accessible sources, or the obtaining of the information would be prohibitively expensive, or the information is in transit, or the obtaining of the information would in some way be apprehended, and if the forwarding of this information is not in some way legally forbidden. In addition to the legal obligation of government agencies to assist each other, there are specific cooperative agreements between various government agencies that stipulate, in detail, the procedures for aiding each other.

On 5 October 2001, a cooperation agreement between the Customs Board and the Security Police Board was signed. Cooperation agreements between the Customs and the Police and the Customs and the Border Guard were signed on 21 November 2001.

In order to practically arrange domestic cooperation, a working group of the representatives of the mentioned agencies has been formed. The working group is responsible for the arrangement and implementation of joint activities. The working group meets on a regular basis and deals with all the areas of cooperation.

Sub-paragraph 3 (d):

Estonia made the reservation to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the joining of which has so far been dependent upon joining the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, which became effective on 16 May 2002.

The Convention for the Suppression of Terrorist Bombings was ratified on 10 April 2002, and the Convention on the Suppression of the Financing of Terrorism was ratified on 22 May 2002.

Estonia fully implements the provisions that are stipulated in these UN conventions.

Estonia follows the principle set forth in Article 11 of the Convention for the Suppression of Terrorist Bombings, that none of the terrorist offences (Article 2) shall be regarded as political offence. The request for extradition may not be refused on the ground that it concerns a political offence.

Sub-paragraph 3 (g):

Extradition provisions are settled in the Code of Criminal Procedure. Bilateral extradition treaties are from the pre-war period, for example with USA (1924), UK (1926) and Spain, Norway (1930) etc.

The Republic of Estonia, in accordance with Article 13, paragraph 1 of the European Convention on Suppression of Terrorism, and subject to the conditions thereof, reserves the right to refuse extradition in respect of any offence mentioned in Article 1 of the Convention which it considers to be a political offence or an offence connected with a political offence.

Paragraph 4:

Since there is a concrete necessity to enhance the coordination of efforts on national, subregional, regional, and international levels to strengthen the global response to international terrorism and transnational organized crime, illicit drugs trafficking, money-laundering, illegal armstrafficking, and the illegal transport of nuclear, chemical, biological, and other potentially deadly materials which pose a serious threat to international security, Estonia has intensified its efforts, and is doing its utmost, to adequately meet the challenges of the present era. We are continually making a concerted effort to improve coordination between the various government agencies and to speed up the process of exchanging information. The same stress is being placed upon the proper, timely, and thorough fulfilling of international bi- and multilateral treaties and the obligations which accrue with international organisations like the United Nations and the European Union.

Other matters:

The independent Financial Supervision Authority administratively linked to the Estonian Bank supervises the activities of credit institutions, financial institutions, insurance companies, investment firms, investment funds, management companies, the registrar of the central register of securities, and the stock exchange. Applicable law: Financial Supervision Authority Act.

There are two supervisory bodies operating in the area of governance of the Ministry of Finance:

Tax Board – implementing of the taxation law: excise duties, income tax, gambling tax, gift and inheritance tax, value added tax, land tax, social tax, customs duty, heavy goods vehicles tax. Applicable law: Taxation Act.

Customs Board – Applicable law: Customs Code.

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/523).

The Counter-Terrorism Committee has received the attached supplementary report from Israel, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 24 July 2002 from the Chargé d'affaires of the Permanent Mission of Israel to the United Nations addresssed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In response to your letter dated 1 May 2002 (S/AC.40/2002/MS/OC.69), I have the honour to attach herewith a further report of the Government of Israel prepared in response to the preliminary questions/comments posed by the Counter-Terrorism Committee (see enclosure).

(*Signed*) Aaron **Jacob**
Ambassador
Chargé d'affaires a.i.

Enclosure

State of Israel

Response to the supplementary questionnaire on implementation of resolution 1373 (2001)

24 July 2001

Sub-paragraph 1 (a)

Comment/Question

In view of the efforts of the international community to stop abuse of informal banking networks, please comment on how this is, or will be reflected in Israeli legislation.

Reply

The Israel Knesset recently passed an amendment to the *Prohibition on Money Laundering Law (2000)* that places providers of currency services under the supervision of the Ministry of Finance. In accordance with the amended Law, a Registrar of Currency Services was recently established. This Registrar is required to keep a register of the providers of currency services. The Registrar is to supervise and inspect the activity of the providers of currency services, with a view to regulating their activities.

The amended *Prohibition on Money Laundering Law (2000)* defines the provider of currency services as "any person whose occupation is the provision of one of the services ennumerated below, even if not as his exclusive occupation...

- conversion of the currency of one state into the currency of another state
- sale or redemption of travellers' cheques in any type of currency
- receipt of financial assets in one state in return for making available financial assets in another state; for the purpose of this section "financial assets" means cash, travellers' cheques, cheques, bills of exchange, promissory notes, negotiable securities, credit or monetary deposits.
- the exchange of bank notes
- discounting of cheques, bill of exchange, and promissory notes."

The *Prohibition on Money (Requirements Regarding Identification, Reporting and Record-Keeping by providers of Currency services (2002)* requires providers of currency services to report to the Israel Money Laundering Prohibition authority (IMPA) "the activities of a service applicant which appear to him to be unusual."

While the *Prohibition on Money Laundering Law* does not contain a specific provision which mandates financial institutions to report to the IMPA when they suspect that funds are related to terrorism, the *Prohibition on Money Laundering Orders* (which are directed to the different financial institutions) mandate the report of any transaction which seems to the financial institution to be unusual. This includes unusual transactions which seem to be linked to, related to or used for terrorism. (It should be noted that the term "unusual transaction" is used in the Orders so that the Israeli Money Laundering Prohibition Authority will receive reports even when the financial institution is unable to link the unusual transaction with money laundering).

Comment/Question

Are natural or legal persons other than banks (e.g. attorneys, notaries) required to report suspicious transactions to the public authorities? If so, what penalties apply to persons who omit to report, either willfully or by negligence?

Reply

The Third Schedule of the *Prohibition on Money Laundering Law (2000)* lists additional entities to whom the obligations imposed on providers of financial services apply. These entities include: Banking corporations, members of the stock exchange, portfolio managers, insurers and insurance agents, provident funds and companies managing a provident fund, providers of currency services and the postal bank.

Section 14 of the law states that where any of these entities breaches an obligation imposed upon it, a financial sanction at a rate of up to 1,500,000 NIS (approximately 300,000 US$) may be imposed upon it.

A copy of this law was provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Sub-paragraph 1 (b)

Comment/Question

The CTC notes that Israel has signed the International Convention for the Suppression of the Financing of Terrorism. Does it intend to introduce amendments to the *Prevention of Terrorism Ordinance (1948)*, the *Penal Law (1977)* or to *Defence Regulations (State of Emergency) (1945)* in order to implement sub-paragraph 1 (b) of the Resolution?

Reply

With regard to these three laws, existing Israeli legislation provides an adequate basis for implementing the provisions of this sub-paragraph.

It should be noted that Israel reviews its legislation concerning terrorist organizations on a continous basis, as part of its efforts to increase effectiveness in the fight against terror.

Sub-paragraph 1 (c)

Comment/Question

Please explain how Israel gives effect to sub-paragraph 1 (c) of the Resolution with respect to funds, financial assets or economic resources which are not connected to money-laundering activities, but derive from lawful sources or activities.

Reply

In its original report Israel cited the following sources of authority for freezing or confiscating assets of terrorist organizations:

Section 5 of the *Prevention of Terrorisn Ordinance(1948)*

Regulation 84(2)(a) of the *Defence Regulations (State of Emergency) (1945)*

Sections 32 and 34 of the *Criminal Procedure Ordinance (Search and Seizure) [New Version] (1969)*

This legislation is also the relevant legislation for funds, financial assets or economic resources which are not connected to money-laundering activities, but derived from lawful sources or activities.

Comment/Question

Please provide copies of the particular provisions of both the *Prohibition on Money Laundering Law (2000)* and the *International Legal Assistance Law (1998)* which allow for enforcement of foreign forfeiture orders.

Reply

Copies of these laws were provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Comment/Question

Please provide a progress report regarding the addition of terrorist crimes to the list of offences designated in accordance with the *International Legal Assistance Law (1998)*.

Reply

Generally, the *International Legal Assistance Law (1998)* does not contain a list of offences as such. Rather, Article 2 of this Law stipulates the nature of legal assistance without any reference to specific crimes to which the law applies, but rather to certain ways in which the State of Israel and another state may render legal assitance to each other.

The only forms of legal assistance which are limited to specific offences are confiscation and forfeiture of property with regard to drug and money laundering offences. Regulatory action is presently underway to add terrorist offences to the schedule of offences for which confiscation and forfeiture are available.

A copy of this law was provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Sub-paragraph 1 (d)

Comment/Question

What preventive controls and surveillance measures has Israel put in place to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organisation?

Reply

In accordance with *Defence Regulations (State of Emergency) (1945)*, non-profit organisations are subject to the same prohibitions and obligations as other individuals and organizations in Israel, concerning the funding of terrorist activities and the reporting to the security authorities on terrorist organization assets in their possession. In addition to the ongoing actions of the security and police forces in preventing terrorist funding by non-profit institutions, the latter are also under the supervision of the Registrar of Associations of the Interior Ministry. As such, they are required to submit regular reports on various aspects of their activities to the Registrar, as well as to other bodies, such as the tax authorities. The supervising authorities can initiate investigations of non-profit organization business; involvement in funding of terrorist activities constitutes grounds for closing them down and dismantling them.

Sub-paragraph 2 (a)

Comment/Question

Please outline the legal provisions prohibiting the acquisition of firearms without a license, in particular at the time of purchase.

Reply

The relevant legislation regarding the supply of weapons is the *Firearms Law (1949)*. Article 6 of this Law stipulates that a permit is needed when buying a firearm or aquiring it in any other way.

A copy of this law was provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Comment/Question

Please outline the legal provisions prohibiting the trafficking and brokering of weapons to terrorists and their organizations.

Reply

The relevant provisions are to be found in the *Firearms Law (1949)*, the *Explosive Material Law (1954)*, the *Defence Regulations (State of Emergency) (1945)* and in the Israeli Government's decisions *411 (1974)* and *190(b) (1999)*.

Copies of the above mentioned laws were provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Comment/Question

Please outline measures, both legislative and practical, preventing entities and individuals from collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Israel, including, in particular:

- The carrying out, within or from Israel, of collecting of funds and soliciting of other forms of support from other countries: and
- Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.

Reply

Under Israeli law, collecting money for terrorist activity is a criminal offence, irrespective of whether the terrorist activity is carried out inside or outside Israel. Raising funds or accepting contributions under false pretenses constitutes not only the crime of involvement in terrorist activity but also of receiving something through fraudulent means. Actions of the security services and Israel Police against the recruiting of individuals and funds for terrorist purposes include prevention of such activities, closing the institutions engaged in these activities, and prosecution of the individuals involved.

The *Prevention of Terrorism Ordinance (1948)*, the *Penal Law (1977)* and the *Defence Regulations (State of Emergency) (1945)* are the laws in which the provisions to this effect are to be found. Copies of these laws were provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Sub-paragraph 2 (c)

Comment/Question

Please outline the legal provisions for excluding or expelling terrorists from Israeli territory.

Reply

The *Entry into Israel Law (1952)* is the main law dealing with entry and dwelling in Israel.

An amendment to this law, which came into force in November 2001, stipulates the terms and procedures for the detention of those who have entered into or are staying in Israel illegally ('illegal aliens'). In accordance with the law, illegal aliens may be detained only after the issuance of an appropriate order from immigration authorities and after the illegal alien has had prior opportunity to state his claims before the issuing authority. In those cases where a hearing cannot be conducted before the issuance of the order, it must be held no more than 24 hours from the beginning of detention. Where a detention order has been issued, the illegal alien shall be informed of his rights including the right, should he wish it, to notify someone close, a lawyer and his Embassy/Consulate.

The immigration authorities may release an illegal alien, inter alia, if their status in Israel was incurred erroneously, due to medical or other humanitarian reasons. Immigration authorities may refuse to release from detention an illegal alien considered to present a danger to national security, public security or health.

The amendment also establishes a tribunal for the judicial supervision of decisions taken by immigration authorities with regard to the detention of illegal aliens. Illegal aliens are to be brought before the tribunal no later than 14 days after the beginning of their detention. Illegal aliens may petition the tribunal at any time, and may request a re-consideration of their case where there has been a change in circumstances. Additionally, they have a right to be present at all hearings concerning their case and to be represented without fee by a representative who is not a lawyer.

Sub-paragraph 2 (d)

Comment/Question

Please explain whether Israeli law prohibits the commission of the act described in this sub-paragraph in cirumstances where there is no incitement to subversion nor incitement to bring down, by force or violence, the lawful government of a foreign country, nor an attempt to destroy the political order of a foreign State.

Reply

The actions described in this sub-paragraph may be prohibited in Israel, even when they are not directed against the State (but rather against its citizens). The relevant legislation in this regard is:

- The *Prevention of Terrorism Ordinance (1948)* – when the actions are carried out within the framework of an organization
- Regular criminal legislation that prohibits actions of this kind in terms of the perpetration of or complicity in the execution of crimes such as murder, the perpetration of attacks, abduction, etc.

Sub-paragraph 2 (e)

Comment/Question

Please clarify the meaning of the term "unlawful association" as defined by the Minister of Defence in accordance with Regulation 84 (2) (a), on one hand, and as defined by section 145 of the *Penal Law*, 1977, on the other.

Reply

The definition of "Prohibited Association" in Article 145 of the *Penal Law (1977)* includes organizations operating against governments of foreign states, organizations acting against property belonging to the State or property used in domestic or foreign trade with the State and even organizations that continue to operate after they have been dismantled in accordance with the law. The definition in Regulation 84 of the *Defence Regulations (State of Emergency) (1945)* refers only to the organizations operating against the Israeli Government, its officials and its assets.

Comment/Question

What are the "certain other conditions", mentioned in paragraph (c) of the item on Extraterritorial Jurisdiction, under which the courts of Israel have jurisdiction over a terrorist crime committed elsewhere where the accused is an Israeli resident and the other conditions specified in that paragraph have been met?

In this context, please provide examples of the application of Article 17 of the Israeli Penal Code.

Reply

Article 17 of the *Penal Law (1977)* has yet to be applied, so no examples are currently available. For this reason, there are no "certain other conditions" to speak of as yet, beyond the ones already specified in Israel's original response.

Comment/Question

Please provide a progress report regarding the bill on criminal organizations.

Reply

The bill has been approved by the Committee of Ministers on matters of legislation and will soon be published as a proposed Act to be brought before the Knesset.

Sub-paragraph 2 (f)

Comment/Question

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts is required to be met and how long does it actually take in practice to implement such a request?

Reply

There is no legal timeframe in which a request for legal assistance in criminal investigations or proceedings must be executed. The time factor is usually determined by the urgency of matter, the extent and complexity of the assistance requested, the seriousness of the crimes, and the necessity of acquiring court orders in the case of particular forms of assistance. For these reasons, it is also not possible to talk about an "average" time in which requests are executed. Assistance in matters relating to terrorist crimes, including the funding and financing of these crimes, are given a very high priority and every effort is made to ensure that such requests are executed as quickly as possible.

Comment/Question

As stated in the report, Israel has been a State party to the European Convention on Extradition since 1967. Israel has made the following reservation to this convention: "Israel will not grant extradition of a person charged with an offence unless it is proved in a court in Israel that there is evidence which would be sufficient for committing him to trial for such an offense in Israel." Has this reservation ever been invoked following a request for extradition by another State?

Reply

Israel's reservation to the European Convention on Extradition provides that Israel will only grant extradition of a wanted person for an extraditable offense if evidence is submitted "which would have been sufficient for committing him to trial for such an offense in Israel...". This Reservation is based on the requirement of section 9 of Israel's *Extradition Law (1954)* which provides that a person will only be declared extraditable by the extradition court with respect to any particular offence if "it is proved that the wanted person has been convicted

of an extradition offence in the requesting State, or that there is evidence which would be sufficient for committing him to trial for such an offence in Israel..."

Because this requirement is mandated under Israeli law, a clause or reservation conditioning extradition on the submission of such evidence is contained in all the extradition agreements to which Israel is party and extradition cannot take place unless this evidence has been submitted by the requesting State.

The Israeli courts have interpreted this evidentiary requirement mandated by section 9 to refer to the requirement for the submission of prima facie evidence sufficient to have supported the issuance of an indictment against the suspect. This standard can be generally understood to mean that sufficient evidence should be submitted to have supported a conviction of the suspect were the evidence to be presented, accepted as true and not contradicted at trial.

It is, of course, accepted under the Israeli *Extradition Law* and regulations that evidence submitted on behalf of a request for extradition can be in the form of documentary evidence, and it is almost exclusively the case that evidence in extradition matters is submitted in the form of documentary evidence.

The Israeli courts have emphasized that the purpose of this evidentiary requirement is not, and must not be, to substitute the proceedings of the Israeli extradition court for those of the trial court in the requesting state. The Israeli courts merely assess whether there exists sufficient evidence against the wanted person to warrant bringing him to trial in the requesting state, to determine the question of his guilt or innocence. In this context, while the Israeli extradition court will consider the *sufficiency* of the evidence, it will not generally weigh the *credibility* of the evidence (e.g., whether to believe one witness rather than another). The Israeli courts have considered the assessment of the credibility of the evidence to be the function of the trial court in the Requesting State, following extradition.

In requiring the submission of prima facie evidence, Israeli law follows the general tradition of other common law states. This safeguard is often seen in Israel as a balance to its willingness to extradite its own citizens, unlike the case of most non-common law jurisdictions.

Sub-paragraph 3 (a)

Comment/Question

Please indicate how Israel intends to intensify and accelarate the exchange of operational information, particularly in respect of the use of communication technologies by terrorist groups?

Reply

Israel has already enhanced its cooperation on this issue and will continue to consider ways to do so through existing bilateral mechanisms as well as other mechanisms that may be established in the future.

Sub-paragraph 3 (c)

Comment/Question

With which countries has Israel entered into bilateral treaties on extradition and mutual legal assistance?

Reply

Bilateral treaties on extradition have been signed between Israel and:

- The United States of America;
- Canada;

- South Africa;
- Swaziland;
- Australia; and
- Fiji.

Bilateral treaties on mutual legal assitance have been signed between Israel and:

- Australia;
- The United States of America; and
- Canada.

It should be noted that Israel is Party to the *European Convention on Extradition* and the *European Convention on Mutual Assitance in Criminal Matters* which regulates Israel's relations with over 40 states regarding extradition and mutual assistance in criminal matters.

Sub-paragraph 3 (d)

Comment/Question

The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Israel in :

- Becoming a party to the instruments to which it is not yet a party: and
- Enacting legislation, and making other necessary arrangements, to implement the instruments to which it has bercome a party.

Reply

Several updates can be made to Israel's initial report with regard to the status of international conventions relating to terrorism:

- *Convention on the Physical Protection of Nuclear Materials, 1980* – Israel has become Party to the Convention.
- *International Convention for the Suppression of Terrorist Bombings, 1997* – the process towards ratification of the Convention is in its advanced stages.
- *International Convention for the Suppression of the Financing of Terrorism, 1999* - the process towards ratification of the Convention is in its advanced stages.

Sub-paragraph 3 (e)

Comment/Question

Have the crimes set forth in the relevant international conventions relating to terrorism been included as extraditable offencess in the bilateral extradition treaties to which Israel is party?

Reply

Most of Israel's extradition relations under extradition treaties are not limited by a schedule of specific extraditable offences. Thus, for example, the *European Convention on Extradition* which regulates Isreal's extradition relations with over 40 states declares as extraditable every offence punishable under the laws of the requesting Party and of the requested Party by incarceration for a maximum period of at least one year.

Several bilateral treaties to which Israel is Party do contain a schedule of offences. These do not usually relate to terror, but include offences such as murder, attempted murder, conspiracy to comit murder, which cover many terrorist offences.

Israel is attempting to negotiate ammendments to such treaties, which will explicitly make serious terrorist offences extraditable.

Sub-paragraph 3 (f)

Comment/Question

Please provide a progress report on the refugee legislation under consideration and specify which measures will be put in place to prevent refugee status from being abused.

Reply

There is no legislation in Israel that deals directly with refugees. Recently, the issue of the determination of refugee status under the *Geneva Convention of 1951* regarding the Status of Refugees, has undergone significant changes in Israel. The result of these changes is the establishment of a comprehensive inter-ministerial body for the assessment of applications for asylum and the granting of status to those asylum seekers recognized as refugees. The National Status Granting Body (hereinafter: 'NSGB') serves as an advisory committee to the Minister of Interior, who has authority under the law to determine the status of any person in Israel.

There are four mechanisms for the review and appeal of decisions taken by the NSGB regarding applications for asylum in Israel:

- As the NSGB operates as an advisory committee to the Minister of Interior, all NSGB recommendations are presented to the Minister for his final decision. At this stage, the Minister may uphold the NSGB's recommendations, reject them or return the matter for further consideration.
- Rejected applications for asylum may be brought before the NSGB for re-consideration where circumstances have changed or where new facts or documents have been revealed.
- Applicants having procedural objections pertaining to the work of the committee, may submit their objection to the Minister of Interior.
- Another form of appeal is embodied in the right of any person to submit a petition to the Israeli Supreme Court sitting as the High Court of Justice, if injury has been caused by any governmental authority. As Israeli citizenship is not a requirement for such a petition, this form of judicial supervision is open to asylum seekers. The Court has authority to deal with any petition brought before it, and legal represention is not required.

Sub-paragraph 3 (g)

Comment/Question

Please provide the CTC with a copy of, or provide an internet reference for, the particular provisions of the Extradition Law (1954), as amended in 2001, which ensures that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists, as requested by sub-paragraph 3 (g) of the Resolution.

Reply

A copy of the *Extradition Law (1954)* was provided in translation as an annex to Israel's original report. The relevant provisions are 2B(b)(2) and 2B(b)(5). Further copies can be provided upon request.

Paragraph 4

Comment/Question

Has Israel addressed any of the concerns expressed in paragraph 4 of the Resolution?

Reply

Israel has consistently supported regional and international cooperation aimed at preventing the flow of non-conventional weapons, materials, technology and know-how, as well as the prevention of transnational organised crime, illicit drugs, money laundering and the illegal trafficking of arms.

Israel continues to strengthen its actions to this effect in all of the above mentioned fields.

In this context, Israel is please to inform the Conter Terrorism Committee that as of 22 February 2002 the State of Israel is Party to the *Convention of the Physical Protection of Nuclear Materials*.